

Summary of Proposed Changes to the
May 2008 Draft Conceptual Framework for an UCFRB Restoration Priorities Road Map

Prepared by the Natural Resource Damage Program
December 24, 2008

Introduction and Background

In late May 2008, the Governor's Trustee Restoration Council directed the Natural Resource Damage Program (NRDP) to solicit public comment on the May 2008 *Draft Conceptual Framework for an UCFRB Restoration Priorities Road Map (Draft Road Map)*. The UCFRB Remediation and Restoration Advisory Council had previously considered and deliberated on the *Draft Road Map* at multiple meetings. The NRDP subsequently held four public hearings and a 60-day public comment period on the *Draft Road Map*.

The NRDP and Advisory Council have been asked by the Governor to try to work out a consensus proposal on this conceptual framework by early next year. The NRDP distributed the public comments on the *Draft Road Map* and a summary of them to the Advisory Council and Trustee Restoration Council at their December 9, 2008 and December 17, 2008 meetings, respectively. Below are the three major changes to the *Draft Road Map* that the NRDP recommends as a consensus proposal for consideration by the Advisory Council at its special meeting scheduled for January 5, 2009. These three changes are reflected in the revised flow charts (attached) depicting the revised conceptual framework. Attachment A shows the revised simplified version of the flow chart of the proposal without any estimated funding amounts. Attachment B provides the more detailed revised flow chart indicating funding estimates that are based on fiscal year end 2008 information and projected fiscal year 2009 interest revenues.

We are seeking to reach consensus only on the conceptual framework for the *Draft Road Map* document, with a focus on:

- the proposed earmarking of certain funding amounts for integrating restoration with remediation for the Silver Bow Creek, Dutchman, Warm Springs Creek, and Willow Creek projects reflected in the blue boxes shown in Tier 2; and
- the proposed allocations of remaining funds according to the indicated percentages shown in Tier 3 and Tier 4.

As indicated in the *Draft Road Map*, after a decision by the Governor on the conceptual framework, the NRDP will propose a revised *Restoration Plan Procedures and Criteria (RPPC)* document that would specify the processes to be followed and criteria to be used to implement the approved conceptual framework. The public review process for the revised *RPPC* would involve a similar public review process as did the conceptual framework. We anticipate it would take between 6 months to a year for the development of a revised *RPPC*, including public review. Another grant cycle will occur in 2009 pursuant to the provisions in the existing *RPPC*, with a funding cap of \$15 million.

A. Deferral of Decision on Silver Bow Creek Remediation Leftover Funds

The NRDP proposes that a decision about how to allocate any funds leftover from the Silver Bow Creek (SBC) remediation be deferred until after the major remedy construction activities are completed, which is anticipated to occur in 2012. Under the provisions of the 1999 Consent Decree, these leftover funds are to be allocated to the UCFRB Restoration Fund. Following that transfer, the May 2008 *Draft Road Map* proposed that these funds be allocated similarly to the proposed allocations for the other UCFRB Restoration Funds obtained through the 1999 settlement. Under the revised *Draft Road Map*, how leftover SBC funds would be allocated after the transfer to the UCFRB Restoration Fund would be left to future decision-making, with similar opportunities for public input as now exists under the *RPPC*.

The allocation of leftover SBC remediation funds was an issue that generated confusion and differing opinions both before and during the public comment period. Input was generally split between comments in support of allocating the funds as proposed in the *Draft Road Map* for restoration work basin-wide and, in contrast, comments in support of earmarking these funds for restoration work solely within the SBC watershed. By deferring, we can take advantage of having more information relevant to the decision as to how these funds should be used, including knowledge about:

- the amount that will be set aside for future operation and maintenance of the SBC remedy and how that operation and maintenance will be accomplished;
- the precise amount of SBC funds that will be transferred to the UCFRB Restoration Fund;
- the significance of any SBC recontamination problems, about which some commenters expressed a concern, and how such problems have been or will be addressed;
- the restoration needs in the Basin; and
- the prioritization of aquatic and terrestrial restoration activities in the Basin.

It needs to be understood that deferring this decision does not involve a pre-determination of any future funding decision regarding the allocation of the leftover SBC remediation funds. Nor does it reflect any agreement with any proposals to earmark these leftover funds to work in particular areas of the UCFRB. Rather, it reflects an understanding that it would be beneficial to have additional information, such as that identified above, in deciding how best to allocate these additional funds for future restoration work.

B. Increased Contingency or “Reserve”

The NRDP received numerous public comments suggesting that the 5% contingency in the *Draft Road Map* be increased. Uncertainties, the infancy and long-term nature of restoration work in the Basin, and the incompleteness of some remedy decisions were the major reasons offered for increased contingency or, more appropriately named, “reserve”. For the revised road map, the

NRDP proposes that the proposed reserve allocation be increased from 5 to 10% and that the 35% allocation for future grant projects be correspondingly reduced to 30%. In the May 2008 *Draft Road Map*, the reserve would have also covered any basin-wide monitoring needs. The NRDP now recommends that basin-wide monitoring needs be covered under the applicable priority resource funding instead of covered by the reserve. For example, if any monitoring of fishery populations beyond approved project-specific monitoring is needed, this monitoring would come out of the aquatic priority fund.

The *Draft Road Map* did not indicate how and when a decision would be made about expenditures of reserve funds. Taking into consideration the major reasons offered during the public comment period for an increased reserve, the NRDP further proposes that this reserve fund not be considered for any specific funding allocation or expenditures until 2025, which is the anticipated timeframe for completion of priority groundwater, aquatic, and terrestrial restoration projects and also the anticipated timeframe for completion of major restoration activities that have yet to be fully planned and initiated (Butte Area One, Clark Fork River, and Smelter Hills Uplands).

C. Increased Allocation for Silver Bow Creek Restoration

The *Draft Road Map* proposed that \$3.5 million be set aside to fund the remaining needed ecological components along SBC, which have been identified by the NRDP and Greenway Service District (GSD), but have not been funded through the grants process and mostly involve restoration work along the last three miles of SBC upstream of Warm Springs Ponds. As a result of the public comments received on the *Draft Road Map* and further consultation with representatives of the GSD, the NRDP proposes two additional changes, beyond the \$3.5 million set aside for ecological components, with respect to the funding of restoration activities along SBC through the SBC Greenway project. These changes would involve a total of \$6 million set aside for SBC restoration instead of \$3.5 million. The two changes involve:

1) Consolidation of existing approved grants: The previous approval of about \$14.1 million for the six approved Greenway grant projects¹ would be modified through a grant amendment to consolidate the six projects into one project to allow for more flexibility and administrative feasibility in accomplishing the scope of work for these approved grant projects. As of October 2008, of the \$11.9 million total approved for the first five Greenway grants, approximately \$5.6 million has been spent and \$6.3 million has not been spent. In addition, on December 22, 2008 the Governor approved the sixth Greenway grant for \$2.2 million in funding. This modification would entail combining the budgets for the projects and allowing, with NRDP approval, for transfers between the budget categories to move funding from categories where there is excess funding to categories where there are cost-overruns. For example, a portion of the approved total budget for the 2002 Greenway Grant was for the removal of tailings at Ramsay Flats, in addition to the tailings being removed under remediation. That tailings removal project was completed in 2006, and \$333,310 remains unspent under that budget category. The proposed grant amendment would allow this unused balance to be used to cover the costs of some yet-to-be constructed access features that were previously approved in the scope of work for these grant agreements for which the costs exceed the budgeted amounts. Another example of the type of change that would occur under this consolidation would be to allow leftover contingency from

¹ Greenway grant projects approved in 2000, 2001, 2002, 2005, 2007, and 2008.

one year's grant budget to be used for cost-overruns for another year's grant budget. The total budget approved for these combined grants would not change, but the amount for the specific budget categories within the total budget would change. Only the funding of specific work items that were approved previously could be supplemented with additional funding in this way, thus the scope of work for the approved projects would not change. The proposed grant amendment would provide more details on the changes in budget categories and would be the subject of consideration by the Advisory Council and the Trustee Restoration Council and a final decision by the Governor.

2) An additional \$2.5 million set-aside for access features: The NRDP met with GSD representatives on December 16, 2008 to review the entire scope of the Greenway project, focusing on future desired project components that have not been considered for funding through the grants process. We reached consensus on an agreement to propose \$2.5 million to be set aside for additional access features that, from a timing, cost-effectiveness, and protectiveness standpoint, should be implemented in the next four years in conjunction with the completion of remedy. It is important to understand that this additional proposed set-aside would not fund the entire Greenway project. The GSD projects future budget needs, in addition to those covered through the approved grants process and through this proposal, that total \$5 million. This future funding remains to be considered and approved after the SBC remedy is substantially completed. In reaching agreement with the GSD on this proposal, the NRDP agrees that this proposal will not be viewed as any pre-determination of future funding decisions and will not be interpreted as an indication that the GSD will not seek additional Restoration Funds for the proposed parts of the Greenway project not covered through the approved grant agreements or this proposal. It must also be made clear that the entire GSD Board has not been updated about this recent discussion between the NRDP and Greenway staff and has not approved the NRDP and Greenway staff's agreement.

The proposed \$2.5 million set-aside would cover:

- a) Access components that should be coordinated with the Streamside Tailings Operable Unit (SSTOU) remedy through its projected completion in 2012, in order to achieve cost savings or in order to prevent future adverse impacts that would occur due to disturbance of remediated and restored areas. An example of such a feature would be the bridges and culverts associated with trail construction that require the use of heavy equipment to implement.
- b) Access components associated with completing the primary trail along the mainstem of SBC and to controlling public access to remediated/restored area in a manner that is protective of these areas. Through the approved Greenway grants, recreational access features have been funded for 11 miles of the intended 20-mile recreational trail. Some of the \$2.5 million would be used to fund an additional 9 miles of trail in areas not covered by approved grants.
- c) An additional 20% for engineering design and contingency for the above project components. These components are estimated to cost \$2 million, so the contingency is \$500,000.

These improvements covered under this proposed set-aside of \$2.5 million, along with the \$3.5 million set-aside proposed for ecological improvements, would be constructed either by contractors competitively procured by DEQ or GSD and paid for with Restoration Funds. Attachment C indicates the major components that would be funded with the \$2.5 million. Further details of these components are available on a spreadsheet provided by the GSD that is available upon request.²

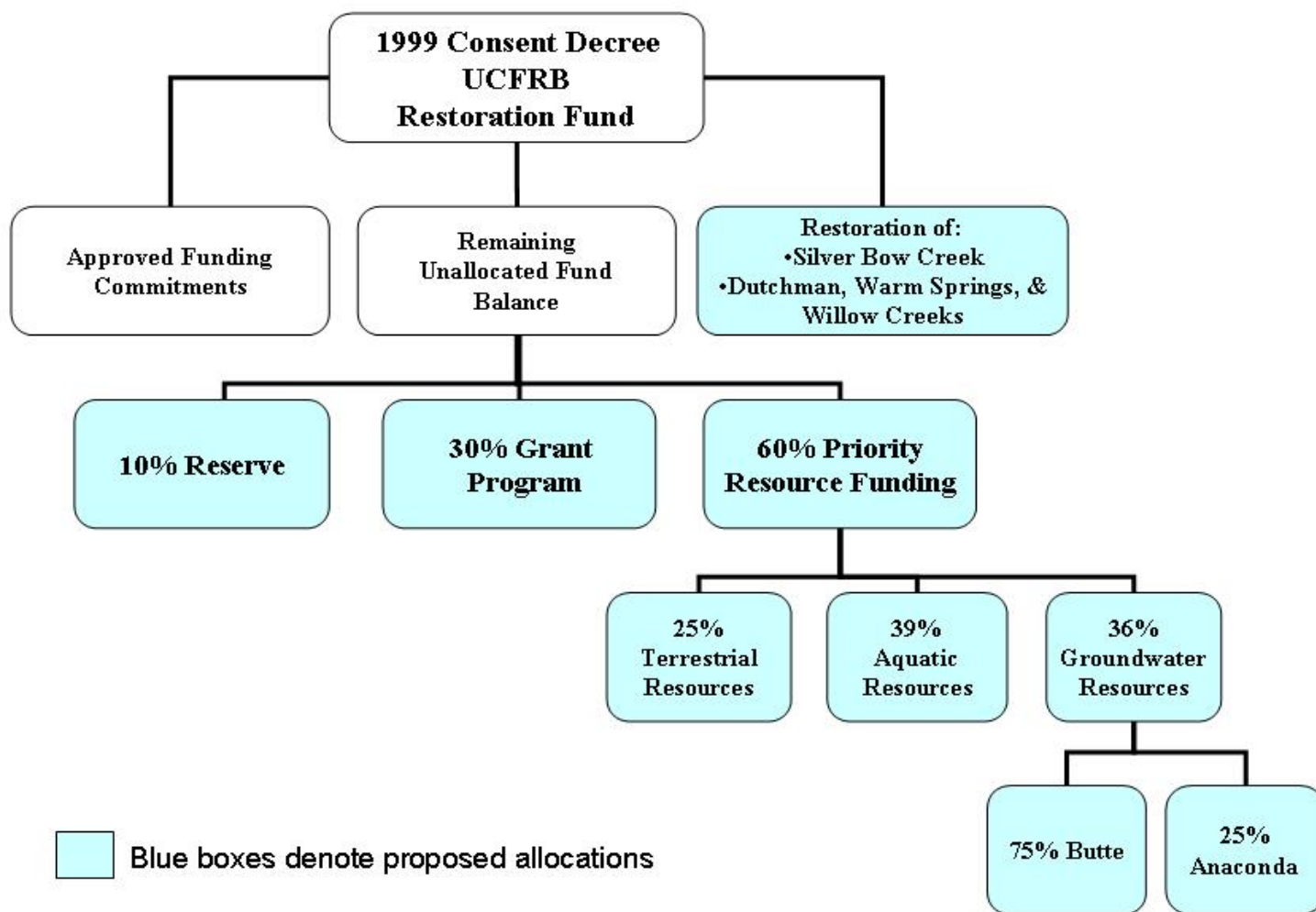
Attachment 5 of the *Draft Road Map* that provided supplemental information on the proposed SBC ecological allocation would be revised to reflect the changes outlined above, as would other portions of the *Draft Road Map* referring to earmarking of Restoration Funds for SBC restoration.

² Spreadsheet dated 12/15/08 prepared by Joel Gerhart of Pioneering Consulting for the GSD and NRDP entitled “SBC Greenway Updated Estimate of Remaining Quantities and Cost”.

Attachment A

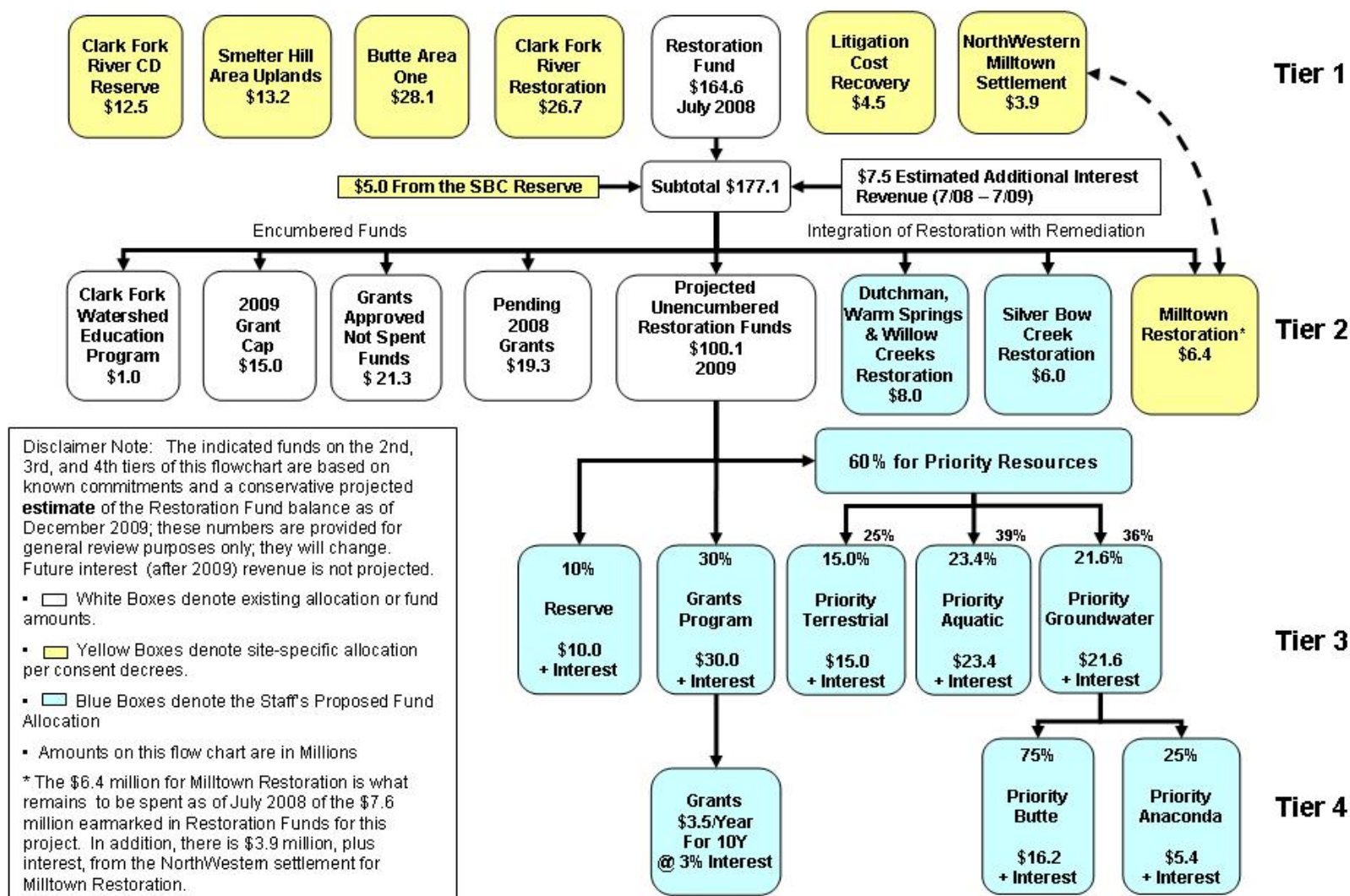
Basics of Revised Draft Road Map Proposal

December 2008



Attachment B

Revised Draft UCFRB NRD Fund Allocation Flow Chart December 2008



Attachment C:

Approximate Budget Breakdown for Proposed \$2.5 million Greenway project set-aside (future access component)

Subarea 1	\$ 138,400
Subarea 2	\$ 985,600
Subarea 3	\$ 938,500
Subarea 4	\$ 21,400
Subtotal	\$2,083,900

20% for contingency and design: \$416,800

Total - \$2,500,000

Subarea 1: two miles of base trail for \$138,400

Subarea 2: two miles of paved trail for - \$396,000

one foot bridge for - \$115,000

Miles Crossing trailhead - \$190,000

Bridge improvements - \$100,000

Sand Creek trailhead - \$145,000

Misc. trail crossings - \$45,000

Subarea 3: five miles of unpaved trail - \$371,500

Two foot bridges - \$235,000

Gregson trail head - \$125,000

Bridge improvements - \$175,000

Railroad crossings - \$32,000

Subarea 4: Rail crossing/fencing - \$21,400

None of these project components are covered in approved grant agreements. Further line-item budget details of the features that comprise these access components are available on a spreadsheet provided by the GSD that is available upon request.³

³ Spreadsheet dated 12/15/08 prepared by Joel Gerhart of Pioneering Consulting for the GSD and NRDP entitled "SBC Greenway Updated Estimate of Remaining Quantities and Cost".